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December 20, 2010

Jeff Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington DC 20463

Re: MUR 6412

Dear Mr. Jordan:

This constitutes the response of Senator-elect Richard Blumenthal, Cynthia Blumenthal, Blumenthal for Senate and Ellen Camhi, as Treasurer (collectively, the "Respondents") to the Complaint filed by the Connecticut Republican Party on October 27, 2010. The Complaint alleges that the loans made by Senator-elect Blumenthal to his campaign violated several provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). These allegations are false and are unsupported by the Complaint. Because the loans were made entirely from Senator-elect Blumenthal's "personal funds," the Complaint should be dismissed immediately.

FACTUAL BACKGROUND

Senator-elect Blumenthal made three loans to his campaign – on September 30, October 7, and October 22, 2010 – totaling \$2,512,882. See Post-General Election Report for Blumenthal for Senate, at 452-454, available at <http://herndon1.sdrdc.com/cgi-bin/fecimg/?F10021144037>. To make these loans, Senator-elect Blumenthal sold a number of personal assets – including his interest in the personal residence jointly owned by himself and his wife, Cynthia Blumenthal – and withdrew funds from several accounts.

LEGAL DISCUSSION

The Act permits a candidate to make unlimited expenditures from "personal funds." See 11 C.F.R. § 110.10; *Buckley v. Valeo*, 424 U.S. 1, 53 (1976) (holding that a "restriction on a

candidate's personal expenditures is unconstitutional."').¹ Likewise, "[C]ommission regulations permit a candidate to make unlimited contributions, including loans, from the candidate's personal funds to [his] authorized committees." Advisory Opinion 1985-33 (Collins).

A candidate's "personal funds" are comprised of his "assets," "income," and "jointly owned assets." 11 C.F.R. § 100.33. Commission regulations define a candidate's "assets" to include "[a]mounts derived from any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had ... (1) [l]egal and rightful title; or (2) [a]n equitable interest." *Id.*, § 100.33(a). A candidate's "income" includes, amongst other things, "income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments." *Id.*, § 100.33(b)(2). And a candidate's "joint assets" include "[a]mounts derived from a portion of assets that are owned jointly by the candidate and the candidate's spouse." *Id.*, § 100.33(c).

I. The assets that Senator-elect Blumenthal sold to make the loans to his campaign qualified as "personal funds."

Income from the assets sold by Senator-elect Blumenthal to make the loans to his campaign qualified as "personal funds" under the Act and Commission regulations. This included the proceeds from the sale of Senator-elect Blumenthal's interest in his personal residence (hereinafter, the "Greenwich property") to Mrs. Blumenthal.

It is well-established that "[n]o contribution ... would occur ... where a candidate sells property that he or she owned prior to becoming a candidate at the property's normal and usual market price *regardless of whether or not the purchaser is a family member* or prohibited from making a campaign contribution." Advisory Opinion 1984-60 (Mulloy) (emphasis added) (permitting candidate to sell one-fourth interest in property to family members who also owned interest in property).² Like the candidate in Advisory Opinion 1984-60, Senator-elect Blumenthal owned the Greenwich property before becoming a candidate and then sold his interest in the property to a family member at "an arms-length, fair market value price." *Id.* On June 23, 2010, the Senator-elect's home was appraised at between \$4,000,000 and \$4,018,600 by a state-certified appraiser. See Appraisal of Property Located at 145 Clapboard Ridge Road, Greenwich,

¹ Senator-elect Blumenthal's Republican opponent, Linda McMahon, made loans and contributions from her personal funds exceeding \$50 million during the 2010 election cycle. See Post-General Report of Linda McMahon for Senate 2010, at 4, available at <http://herndon1.sdrdc.com/cgi-bin/fecimg/?F10021004047>.

² This Advisory Opinion is consistent with the general principle that a candidate may sell or lease an asset, without the proceeds being treated as a "contribution," provided that the sale or lease is made at fair market value. See, e.g. Advisory Opinion 1995-8 (Siopais) (permitting campaign committee to lease commercial real estate owned by candidate and his wife, provided that the campaign committee was charged fair market value).

December 20, 2010

Page 3

Connecticut (attached as Exhibit A). The appraisal is prima facie evidence of the Greenwich property's fair market value price. See Advisory Opinion 1984-60, n. 5 ("[T]he Commission would view an appraisal by an expert using acceptable appraisal methods as prima facie evidence of the property's usual and normal market price."); Factual and Legal Analysis, MUR 5421 (Kerry for President), at 6 (treating appraisal by state-certified appraiser as "prima facie evidence of the fair market value" of the property). Finally, on September 8, 2010, Senator-elect Blumenthal sold his interest in the property to Mrs. Blumenthal for \$1,607,994.13. See Bill of Sale and Indemnification Agreement (September 8, 2010) (attached as Exhibit B). That amount is equal to the fair market value of a 50 percent interest in a \$4,000,000 property, encumbered by a \$784,011.75 mortgage. See *id.*

Because Senator-elect Blumenthal sold pre-candidacy assets at their fair market value, the proceeds of those sales qualified as "personal funds" that he could loan or contribute to his campaign.

II. Senator-elect Blumenthal had sufficient "personal funds" to make the loans.

Senator-elect Blumenthal had sufficient "personal funds" to make the loans to his campaign. The Complaint's assertion to the contrary is based on the assumption that Senator-elect Blumenthal's "personal funds" consisted *solely* of the assets disclosed on his U.S. Senate Financial Disclosure Report. See Complaint at 1. That assumption is simply wrong. A candidate, for example, is *not* required to disclose on his Financial Disclosure Report "property which is held or maintained purely, for recreational or vacation purposes" or "[p]ersonal property not held for investment or the production of income." Public Financial Disclosure Report for the U.S. Senate, at 11, available at <http://ethics.senate.gov/downloads/pdf/files/fdinstruct10.pdf>. Furthermore, a candidate's Financial Disclosure Report is necessarily limited by the date of filing. A report filed by a candidate in April 2010 would not include income generated from the sale of assets in September 2010.

Thus, by erroneously citing the maximum value of assets disclosed on Senator-elect Blumenthal's April 2010 Financial Disclosure Report as the sum total of the Senator-elect's "personal funds," the Complaint excluded from its calculation of personal funds the fair market value of Senator-elect Blumenthal's share of the Greenwich property (valued at more than \$1.6 million), any additional income received after April 2010, and other assets not required to be disclosed on the Report.

When all of Senator-elect Blumenthal's assets, income, and jointly-owned assets are included, there is no question that Senator-elect Blumenthal had sufficient "personal funds" to make the loans to his campaign.³ The allegations set forth in the Complaint are premised *entirely* on the

³ If the proceeds from the sale of the Greenwich property alone were added to the Complainant's calculation of Senator-elect Blumenthal's assets, even the Complainant would have to concede that Senator-elect Blumenthal had, at the very least, between \$2.289 million and \$3.175 million in assets to make the loans to his campaign.

11044300367

December 20, 2010

Page 4

assumption that Senator-elect Blumenthal's "personal funds" consisted solely of the assets listed in his Financial Disclosure Report. Because that assumption is wrong, and because the Complaint asserts no alternative basis for its allegations, the Complaint should be dismissed and the Commission should take no further action against the Respondents. See First General Counsel's Report, MUR 5276 (Friends of Jack Macheck) (May 26, 2004) (dismissing complaint alleging that candidate lacked sufficient "personal funds" to loan to campaign).

Very truly yours,

A handwritten signature in black ink, appearing to read "Marc E. Elias", with a long, sweeping horizontal line extending to the right.

Marc E. Elias
Kate Sawyer Keane
Counsel to Respondents

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Exhibit B

BILL OF SALE AND INDEMNIFICATION AGREEMENT

THIS BILL OF SALE AND INDEMNIFICATION AGREEMENT made as of the 8th day of September, 2010, by and between Richard Blumenthal (the "Seller") and Cynthia M. Blumenthal (the "Purchaser").

WHEREAS, the Seller and the Purchaser are the current beneficiaries of the income and the principal of the Abigail and John Trust (the "Trust"), created under trust agreement dated November 7, 1994, as amended and restated, between Cynthia M. Blumenthal and Richard Blumenthal, as Grantors, and Thomas N. Keltner, Jr., as Trustee;

WHEREAS, the Trust owns all of the right, title and interest in and to the real property and residence located at 145 Clapboard Ridge Road, Greenwich, Connecticut (the "Property");

WHEREAS, pursuant to a recent appraisal of the Property, its fair market value is Four Million Dollars (\$4,000,000) (the "Appraised Value");

WHEREAS, the Property is encumbered by a mortgage securing a loan (the "Loan") with a current outstanding balance and accrued interest of Seven Hundred Eighty-Four Thousand Eleven Dollars and Seventy-Five Cents (\$784,011.75);

WHEREAS, each of the Seller and the Purchaser has personally guaranteed the Trust's obligation to repay the Loan (the "Guarantee");

WHEREAS, the Seller wishes to sell to the Purchaser all of his right, title and interest in and to the income and the principal (the "Beneficial Interest") of the Trust for the sum of One Million Six Hundred Seven Thousand Nine Hundred Ninety-Four Dollars and Thirteen Cents (\$1,607,994.13) (the "Purchase Price"), which is one-half of

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the difference between the Appraised Value and the outstanding balance and accrued interest due on the Loan;

WHEREAS, under the terms of the Loan, the Seller will remain personally liable under the Guarantee after the sale of the Beneficial Interest to the Purchaser is completed.

NOW THEREFORE, in accordance with the foregoing premises, which specifically are incorporated herein by reference:

1. The Seller hereby sells to the Purchaser all of his Beneficial Interest in the Trust for the Purchase Price.
2. The Purchaser hereby indemnifies and agrees to hold harmless the Seller from and against any and all claims and demands of any kind or nature (together with all legal and other expenses of defending or adjusting the same) that may arise under the Guarantee.
3. This Agreement shall be binding upon and shall inure to the benefit of each of the undersigned and their respective heirs, executors, administrators, successors and assigns and upon any person claiming through any of them.

4. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the date first above written.

SELLER:

PURCHASER:



Richard Blumenthal



Cynthia M. Blumenthal

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